



Via Overnight Mail and Electronic Mail

December 7, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: Verizon PAP Amendments, D.T.E. 03-50

Dear Ms. Cottrell:

Conversent Communications of Massachusetts, Inc. (Conversent) objects to the proposal of Verizon Massachusetts (Verizon) dated November 8, 2005, to modify the Performance Assurance Plan (PAP). Specifically, Conversent objects to Verizon's proposals to reduce the frequency of the audit from annual to triennial and to make the audit totally discretionary. Conversent further objects to Verizon's proposal to limit a triennial audit (should the Department determine that Verizon's requested frequency reduction is appropriate) to only the most recent twelve months' performance out of the three-year performance period.

Reduction of Audit Frequency and Making It Discretionary. Verizon's principal justification for reducing the frequency of the PAP audits is that it performed well on previous audits. However, that begs the question as to why Verizon performed well in the past.

The reason is simple — Verizon knew it would be audited. Verizon's incentive for good performance drops precipitously if there is no prospect of audit.

The PAP is a key element in ensuring that local exchange markets remain open to competition. In granting Verizon's application under § 271 to enter the long-distance market in Massachusetts, the FCC said that the PAP "provides additional assurance that the local market will remain open after Verizon receives section 271 authorization." Indeed, said the FCC, performance monitoring and enforcement mechanisms like the PAP were "critical complements" to the FCC's § 271(d)(6) enforcement authority. *In the Matter of Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, ¶ 236 (Apr. 16, 2001).

In analyzing the Massachusetts PAP, the FCC specifically cited the annual audit provision as a “key element” of the PAP. The FCC repeatedly cited the annual nature of the audit in describing this key element of the PAP.

The PAP includes review and monitoring mechanisms that assure the data will be reported in a consistent and reliable manner. The Massachusetts Department has ordered Verizon to obtain an independent audit of Verizon’s data and reporting on an annual basis. The Massachusetts Department will select the auditor and the audit will be subject to the Massachusetts Department’s review.

Id. ¶ 247.

Given the FCC’s repeated references to an annual audit as a key element of the PAP, it is questionable whether a less-than-annual, discretionary audit would have passed muster at the FCC. Without an effective PAP, the FCC would not have approved Verizon’s application. “We note that in all the applications that have been granted to date, each contained an enforcement plan to protect against backsliding after entry into the long-distance market.” *Id.* ¶ 236.

The Department should not lightly alter a plan that the FCC specifically cited as a key factor in its decision to grant Verizon 271 authority. Certainly, nothing has changed since the FCC order indicating that it is appropriate to relax the audit requirement. Verizon’s audit performance to date results from its being subject to audit scrutiny. That is not cause to eliminate the audit requirement in whole or part.

For the same reasons, the audit should not be discretionary. There is substantial opportunity for lax performance if Verizon might escape audit. Even if poor performance by Verizon is discovered later, the damage to competition, CLECs, and consumers will have been done and might be irreparable.

The Department should give little weight to the Virginia Commission’s approval of the PAP modification. For whatever reason, no party commented on Verizon’s request in Virginia. The Virginia Commission approved the request by default, without analysis. *Ex Parte: Establishment of a Performance Assurance Plan for Verizon Virginia Inc.*, Case No. PUC-2001-00226, Order Approving Revisions to the Audit Provisions of the Virginia Performance Assurance Plan, at 2 (Aug. 22, 2005) (copy attached). The Virginia Commission’s default approval is no reason to approve the modifications here.

Limiting the Audit to Only the Last Year of the Three-Year Period. If the Department accepts Verizon’s proposal to change the audit frequency from annual to triennial, it should still require that the audit cover the entire performance period. Under Verizon’s proposal, there is no way to check the accuracy of Verizon’s PAP data or results for two full years. For fully two thirds of the performance period, Verizon’s performance under the PAP will escape scrutiny.

Mary L. Cottrell, Secretary
Re: Verizon PAP, D.T.E. 03-50
December 7, 2005
Page 3

The Department should not countenance a two-year window of “anything goes” performance. When the referee is not looking, players foul with impunity. Verizon’s proposal would blindfold the referee for two-thirds of the game. The opportunity for abuse is obvious.

Verizon may claim that a major reason for reducing the audit frequency is to reduce cost, and auditing the entire three-year period would defeat that purpose. Such a claim would be incorrect. An audit covering a three-year period would not cost as much as three annual audits. There are mobilization costs associated with commencing an audit. An audit covering three years would generate mobilization costs. However, a triennial audit covering just one of the three years still would incur mobilization costs, likely equivalent to the costs of mobilizing for the full three-year audit.

In addition, an audit of a three-year period does not involve examining three times the data of an audit covering one year. An audit generally involves sampling of the transactions to be audited. The data sample for a three-year audit would not be triple the size of data set for a one-year audit. Consequently, the person-hours spent examining the data for three years would not be triple the person-hours spent auditing data for a one-year period. Therefore, an audit of a three-year period might not cost much more than an audit of a one-year period every three years.

Especially if the audit becomes triennial, it should remain mandatory. An audit that is out of sight for three years could too easily go out of mind at the end of that period.

Conclusion. For the reasons set forth above, the Department should reject Verizon’s proposal to reduce the frequency of the audit from once per year to once every three years, and to make the audit totally discretionary. If the Department does determine to reduce the audit frequency, it should nonetheless reject Verizon’s proposal to exempt the first two years of the three-year period from any scrutiny.

Thank you for the opportunity to comment. Please contact me (401-834-3326 direct dial or gkennan@conversent.com) if you have any questions.

Very truly yours,



Gregory M. Kennan
Director, Regulatory Affairs and Counsel

Cc: Service List (by electronic and first-class mail)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, SEPTEMBER 22, 2005

COMMONWEALTH OF VIRGINIA, ex rel.

CASE NO. PUC-2001-00226

STATE CORPORATION COMMISSION

Ex Parte: Establishment of a Performance
Assurance Plan for Verizon Virginia Inc.

ORDER APPROVING REVISIONS TO
THE AUDIT PROVISIONS OF THE
VIRGINIA PERFORMANCE ASSURANCE PLAN

2005 SEP 22 PM 3:04

COMMENT CONTROL

On August 2, 2005, Verizon Virginia Inc. and Verizon South Inc. (collectively "Verizon") filed proposed revisions to the Performance Assurance Plan for Verizon Virginia Inc. and Verizon South Inc. ("revised VA PAP") for consideration by the State Corporation Commission ("Commission") in accordance with Section II.K.3 of the VA PAP.¹

Verizon proposes to change future audits of Verizon's implementation of the VA PAP by revising Section II.K.4 of the revised VA PAP which currently provides:

Each year the Commission will audit Combined-Verizon's data and reporting, with the first audit beginning 6 months after Verizon VA enters the Long Distance market in Virginia. The audits shall be performed, at the Commission's discretion, by either the Commission Staff or an independent auditor, selected by the Commission and paid for by Combined-Verizon. The first audit will include an examination of data reliability issues. Subsequent audits will include an examination of data reliability issues at the Commission's discretion. For at least the first six months after the Virginia PAP first becomes effective, the Commission Staff will replicate Combined-Verizon's performance reports to assure that the data in the reports accurately reflects the service quality being provided to the CLECs. The Commission

¹ Pursuant to Section II.K.3 of the VA PAP, Verizon and any other interested person may at any time submit proposed changes to the revised VA PAP to the Commission for its consideration. After Verizon and all interested persons have had an opportunity to submit comments to the Commission on whether the proposed changes should be included in the VA PAP, changes will only be included upon the Commission's approval.

may elect to continue the replication for as long as it deems necessary. (footnotes omitted)

Verizon proposes that Section II.K.4 be revised to read:

The Commission, at its discretion, may audit Combined-Verizon's data and reporting. Such audits may be initiated only once in any two year period. The audits shall be performed, at the Commission's discretion, by either the Commission Staff or an independent auditor, selected by the Commission and paid for by Combined-Verizon. Audits may include an examination of data reliability issues at the Commission's discretion. For at least the first six months after the Virginia PAP first becomes effective, the Commission Staff will replicate Combined-Verizon's performance reports to assure that the data in the reports accurately reflects the service quality being provided to the CLECs. The Commission may elect to continue the replication for as long as it deems necessary. (footnotes omitted)

The implementation and effective date of the revised VA PAP is proposed by Verizon to be the first day of the first calendar month after the calendar month in which the Commission issues an order approving the proposed revisions. Verizon notes that because the proposed revisions do not affect the measurements or the calculation of incentive bill credits under the VA PAP, there will be no need to delay the effectiveness of the proposed revisions.

On August 17, 2005, the Commission issued a Procedural Order for Comments on the Proposed Revisions to the Audit Provisions of the Virginia Performance Assurance Plan ("August 17, 2005, Order"), which provided for any comments to be filed by September 12, 2005, and reply comments to be filed by September 26, 2005. No comments have been filed.

Accordingly, IT IS ORDERED THAT:

- (1) Verizon's proposed revisions to the revised VA PAP filed August 2, 2005, are hereby approved, effective October 1, 2005.
- (2) This case is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.